

„Az irat papír alapú iratról készített elektronikus másolat”

Buda Central District Court
24.Bpk.1172/2019/2

A BUDAI KÖZPONTI KERÜLETI BÍRÓSÁG 1.	
ÜGYIRATSZÁM	KEZDŐIRATON:
Postán / Gyűjtőládába / Személyesen / E-mailen / Faxon / Kézbesítve	
ÉRK.: 2019 AUG 02.	
PÉLDÁNY:	
MELLÉKLET:	
ÜGYIRATSZÁM	01172/2019
UTÓIRATON:	

On 09 July 2019, without holding a hearing, this Court issued the following

ORDER:

The Court **terminates** the criminal proceeding initiated against complainee José Manuel Costa Da Veiga Cosmelli for defamation, a misdemeanour contrary to Section 226 (1) and (2) a) of the Criminal Code.

An appeal shall lie against this Order within 8 (eight) days of service thereof.

GROUND

In his submission received by the Court on 20 March 2019, Károly András Nagy made a criminal complaint against José Manuel Costa Da Veiga Cosmelli based on case facts summarised below.

On 12 February 2019, from the pm.secretary@kmfap.net email address managed by Erika Macsári, the complainee in his capacity as the Grand Master (i.e. the executive officer) of the Knights of Malta Federation of Autonomous Pories of the Sovereign Order of St. John of Jerusalem (hereinafter referred to as “KMFAP”) sent out a circular entitled “CIRCULAR FROM THE KMFAP MAGISTERIAL HOUSE” to all knights and dames worldwide, in which he falsely accused the complainant, the Minister of Foreign Affairs of the KMFAP, of unlawfully selling the KMFAP’s standard diplomatic passports for undue financial gain. As a consequence, the complainant was dismissed from his office held in the Federation and excluded from the Federation. As the complainee had circulated the letter to all the members of the Federation, the complainant drew the conclusion that his exclusion from the Federation had resulted from this fact.

The complainee attached to the complaint the note prepared by him about the misdemeanour together with photos taken of the passports.

As an antecedent to the act constituting the subject matter of the case at hand, in his submission received by the Court on 05 March 2019, Károly András Nagy made a criminal complaint against Dr Péter Sulányi, based on case facts summarised as follows.

On 29 January 2019, the complainee representing the Knights of Malta Federation of Autonomous Pories of the Sovereign Order of St. John of Jerusalem (hereinafter referred to as “KMFAP”) initiated a disciplinary proceeding against the complainant before the Magisterial Peace Court exercising disciplinary powers within the Federation, whereby he falsely accused the complainant of unlawfully selling the KMFAP’s standard diplomatic passports for undue financial gain. As a result of the disciplinary action, the complainant was dismissed from his office and excluded from the Federation. In its Decree No. 24.B.1031/2019/2 issued on 25 June 2019, the Court terminated the criminal proceeding in

this matter, pursuant to Section 492 (1) a) of the Criminal Procedure Act, since the act constituting the subject of the accusation was not a criminal offence.

Based on the documents created in the course of the criminal proceeding launched on the basis of the complaint, the documents attached thereto and the complainant's earlier complaint, it can be concluded that it was the facts, results, consequences and final conclusions arrived at in the course of the disciplinary proceeding and investigation initiated against the complainant that complaineé José Manuel Costa Da Veiga Cosmelli as Grand Master, and thereby the executive officer of the Federation, proceeding on behalf of the KMFAP had communicated to the members of the Federation.

Pursuant to Section 4 (1) of the Criminal Code, “ ‘Criminal offence’ means any conduct that is committed intentionally or – if negligence also carries a punishment – with negligence, and that is considered potentially harmful to society and that is punishable under this Act.” Under Subsection (2), “An ‘act harmful to society’ means any activity or passive negligence which prejudices or presents a risk to the person or rights of others, or the fundamental constitutional, economic or social structure of Hungary provided for in the Fundamental Law.”

Typically, a criminal act – by virtue of violation thereby of the Criminal Code – is unlawful (harmful to society) and therefore in practice the presumption of unlawfulness applies to a criminal act in criminal law. However, there can be situations where a jurisdiction nevertheless permits the commission of a criminal conduct. In such a case, a reason for excluding unlawfulness exists, whereby the criminal act will not become unlawful. Hence, what must at all times be examined in respect of criminal acts is whether or not in the given case there exists any reason for excluding unlawfulness.

From the available data it can be concluded that it was in his capacity as an elected officer of the KMFAP that the complaineé apprised the members of the Federation of the findings, outcomes and conclusions of the inquiry in the form of a “disciplinary briefing”, which he was entitled to do by virtue of his executive office held in the Federation. The statements written down by him and contested by the complainant were facts ascertained as a result of the disciplinary proceeding and inquiry conducted in accordance with the Federation's internal procedures and their disclosure by the executive officer of the Federation to the members was within his executive power.

According to consistent judicial practice, the absence of unlawfulness excludes the ascertainability of a criminal offence, which is underpinned by a situation where the insulting statement has been made within the scope of and in line with an official procedure.

It is settled court practice that no criminal offence is committed by way of a (nonabusive and nondisparaging) statement – even if it was damaging to an individual's reputation – made by the client (in this case a member of the Federation) within his power, in respect of the person concerned, in order to clarify a matter in the course of a proceeding before an authority (in this case the Federation). (BH 2009.135)

Thus, in connection with the complaint, the Court primarily looked into the unlawfulness of the contested conduct and, in doing so, concluded that the complaineé as an elected executive

officer of the KMFAP had, by way of a “disciplinary briefing”, advised the members of the Federation of facts ascertained within the scope of a procedure accepted by the Federation.

In view of the fact that the complainant had joined the Knights of Malta Federation of Autonomous Pories of the Sovereign Order of St. John of Jerusalem voluntarily, he, as a member, recognised the Federation’s rules as binding on himself and thereby accepted that the bodies created and authorised by the Federation were entitled to scrutinise his activities within the Federation; furthermore, he must also accept and submit to these bodies’ decisions made under the procedures adopted by the Federation and their dispositions within the framework of the Federation’s membership. In this respect, the settlement of legal disputes or other contentious situations falls outside the scope of criminal law.

In view of the foregoing, based on Section 15 h) of the Criminal Code and also having regard to Section 4 (1)-(2) of the Criminal Code, in the absence of unlawfulness the complaine’s act did not constitute a misdemeanour of defamation.

Based on Section 492 (1) a) of the Criminal Procedure Act, the Court shall terminate the proceeding if the act constituting the subject of the accusation is not a criminal offence.

Pursuant to Section 766 (2) of the Criminal Procedure Act, the Court shall decide to terminate the proceeding, if the contents of the complaint and the case documents so permit.

Since the aforesaid case facts do not qualify as a misdemeanour of defamation and slander, i.e. fall outside the scope of acts which the legislator has ordered to punish with sanctions, the Court – by applying the provisions of Section 766 (2) of the Criminal Procedure Act and also being mindful of Section 4 (6) of the Criminal Procedure Act – has based on Section 492 (1) a) of the Criminal Procedure Act, terminated the proceeding.

Having regard to the fact that the Court terminated the proceeding initiated exclusively on the basis of a private prosecution before the commencement of a personal hearing, the proceeding is exempt from duty, subject to Section 57 (2) b) of the Act on Duties.

It is on the basis of Section 579 (2) of the Criminal Procedure Act, that the Court, also having regard to the provisions of Section 772 (1) of the Criminal Procedure Act, ruled on the right to appeal.

Budapest, 09 July 2019
Sgd. Dr Márta Seereiner, Judge
This is a certified true copy:
Illegible initials
Seal



TECHNICAL TRANSLATION

Prepared by the Hungarian Office
for Translation and Attestation Ltd.

This translation shall in no way replace attested
translation.